

APPEAL NO. 023239  
FILED FEBRUARY 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 20, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury on \_\_\_\_\_; that the injury was not caused by the claimant's willful attempt to injure another person; and that the claimant did not have disability resulting from the compensable injury. The claimant and the appellant/cross-respondent (carrier) each appeal those determinations that are adverse to them. The carrier responds to the claimant's appeal, arguing that it should not be given consideration because it was not timely filed and, alternatively, urging affirmance of the disability determination. The appeal file contains no response from the claimant to the carrier's appeal.

DECISION

Affirmed.

As the claimant's appeal was not timely filed, it will not be given consideration. Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was mailed to the claimant on December 4, 2002, at the same address given by the claimant as his return address on the envelope containing his appeal. Pursuant to Section 410.202(a) and (d), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, of the date of receipt of the hearing officer's decision. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) and Section 410.202, the claimant was deemed to have received the hearing officer's decision on December 9, 2002, and the deadline for the claimant to file an appeal was January 3, 2003. The envelope containing the claimant's appeal reflects that it was mailed on January 6, 2003.

The claimant's request for review indicates that he received the hearing officer's decision and order on December 19, 2002. In Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994, we stated "[w]here Commission records show distribution on a particular day to the address confirmed by claimant as being accurate, a mere statement that the decision was not received in the mail is not sufficient to extend the date of receipt past the deemed date of [receipt established by Rule 102.5(d)]." In the present case, the claimant gives no explanation as to why he received the hearing officer's decision 15 days after it was mailed. The claimant's unexplained statement that he did not receive the decision until December 19, 2002, is insufficient to extend the period for filing a timely appeal. Consequently, the claimant's appeal will not be given consideration because it was not timely filed. The hearing officer's disability determination has become final pursuant to Section 410.169.

The hearing officer did not err in determining that the claimant sustained a compensable injury and that the injury did not occur as a result of his willful attempt to injure another person. The carrier argues that the claimant committed an assault, as defined in Chapter 22 of the Texas Penal Code, and because of this the hearing officer erred in finding that the claimant was acting within the course and scope of his employment at the time the injury occurred and that the claimant's injury did not occur as a result of his willful attempt to injure another person. It is noteworthy that the record is void of any evidence reflecting that an assault, either purportedly committed by the claimant or the other person involved in the incident in question, was investigated by a law enforcement agency. Furthermore, there is no indication that the claimant was arrested for or convicted of assault. Under these facts, we cannot agree that the hearing officer was precluded from making the complained-of determinations.

Whether the claimant sustained a compensable injury and whether such injury was the result of his willful attempt to injure another person were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **THE ST. PAUL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge